

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 14-002165
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: August 27, 2014
County: WAYNE-17

ADMINISTRATIVE LAW JUDGE: Lynn Ferris

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on August 27, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant and his spouse, [REDACTED] appeared as a witness. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Enhanced Site Support, and [REDACTED], Assistance Payments Worker.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) and/or State Disability Assistance (SDA) benefit programs?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On November 6, 2013, Claimant applied for MA-P and retro MA-P.
2. On February 28, 2014, the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant the Notice of Case Action dated March 26, 2014 denying the Claimant's MA-P and SDA application.
4. On, April 14, 2014, Claimant submitted to the Department a timely hearing request.

5. On July 21, 2014, the State Hearing Review Team (“SHRT”) found the Claimant not disabled and denied Claimant’s request.
6. An Interim Order was issued on August 28, 2014, extending the record for 60 days. The Department was ordered to obtain the following records and medical testing examination records:
 - a. The Department shall obtain the hospitalization records for May 2014 ongoing of the Claimant’s admission at [REDACTED].
 - b. The Department shall obtain the medical treatment records and testing records from [REDACTED].
 - c. The Department shall obtain the medical treatment records and testing records from [REDACTED], the Claimant’s cardiologist, located at [REDACTED].
 - d. The Department shall obtain the medical treatment records and testing records from [REDACTED].
 - e. The Department shall obtain the medical treatment records and testing records from [REDACTED].
 - f. In addition, the Department was also to provide DHS 49’s from the following doctors who worked Claimant’s treating doctors: **The Department shall obtain a DHS 49 which includes notation and evaluation of limitations from the following doctors:** [REDACTED]; [REDACTED]
7. The Interim Order also required:
 - a. The Claimant shall be given a DHS 49 for each of the 4 doctors referenced above and shall obtain and return a completed DHS 49 for those doctors he has appointments with in the next 60 days. This requirement shall not change the requirement in paragraph 1 of this Interim Order that the Department also attempt to obtain the completion of the DHS 49 form as ordered.
8. The Department did not respond to the Interim Order by providing the medical evidence.
9. Claimant at the time of the hearing was 33 years old with a birth date of [REDACTED]; the Claimant is now 34 years of age. Claimant’s height was 5’ 10” and weighed 222 pounds.
10. Claimant completed the 11th grade and completed a GED.

11. Claimant's prior work experience includes customer services clerk and cashier, and working at a car wash for a car dealer. Both these positions required Claimant to stand 7 hours a day and he also had to be able to drive a car to run errands. The Claimant's neurologist advised him that he could not drive due to the current medications which he is taking and his stroke.
12. The Claimant has not alleged mental disabling impairments in his application.
13. Claimant alleges physical disabling impairments due to coronary artery disease, post catheterization and stenting, stroke with ejection fraction of 30%, congestive heart failure, stroke and hypertension, hyperlipidemia and history of myocardial infarction in 2013.
14. Claimant's impairments have lasted or are expected to last for 12 months duration or more.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under MA-P. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is "severe" or a combination of impairments that is "severe." 20 CFR 404.1520(c). An impairment

or combination of impairments is “severe” within the meaning of regulations if it significantly limits an individual’s ability to perform basic work activities. An impairment or combination of impairments is “not severe” when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual’s ability to work. 20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the Claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the Claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the Claimant’s residual functional capacity. 20 CFR 404.1520(e). An individual’s residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, the trier must consider all of the Claimant’s impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the Claimant has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the Claimant actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the Claimant has the residual functional capacity to do his/her past relevant work, then the Claimant is not disabled. If the Claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth step.

In the fifth step, an individual’s residual functional capacity is considered in determining whether disability exists. An individual’s age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

Claimant alleges physical disabling impairments due to coronary artery disease, post catheterization and stenting, stroke with ejection fraction of 30%, congestive heart failure, stroke and hypertension, hyperlipidemia and history of myocardial infarction in 2013.

Claimant has not alleged any mental disabling impairments.

A summary of the Claimant's medical evidence presented at the hearing and the new evidence presented follows.

The Claimant credibly testified that he had a stroke in May of 2014, and was treated at Oakwood Hospital for 3 weeks, and 2 weeks of inpatient rehabilitation. Thereafter, the Claimant has residual weakness of the left side including his hand/arm and leg. The Claimant was hospitalized for 3 weeks and underwent physical therapy for several weeks' in-patient, and then in-home therapy for one month. The Claimant testified that his most recent ejection fraction was 30%.

On February 14, 2014, a Consultative Internal Medicine examination was conducted. The examination noted the Claimant was positive for heart disease and surgical history for a cardiac catheterization and placement of a stent. The impression noted coronary artery disease and congestive heart failure. The examiner noted no use of a cane or walking aid, and that Claimant was able to get on and off the table slowly, tandem walk heel walk and toe walk are done slowly. The examiner concluded that Claimant does need follow-up for management of this problem with a cardiac specialist. He should avoid toxins, fumes smoke and dust, including cigarette smoke. The exam was essentially normal in all other respects and no restrictions other than those noted in the preceding sentence were imposed by the examiner. This medical evidence predates the Claimant's stroke in May 2014,

A Medical Examination Report was completed by a Doctor who examined the patient for the first time on October 29, 2013. The diagnosis was hypertension, hyperlipidemia and history of myocardial infarction. At the time of the examination, no limitations were imposed, the Claimant was evaluated as stable, and it was based on laboratory and ECG results. At the time of the examination, the Claimant was in no acute distress, and was well-developed and well-nourished. Claimant was evaluated as capable of meeting his needs in the home. At the time of the examination, the Claimant denied chest pain while at rest or with exertion or any dizziness, shortness of breath at rest or with exertion. This medical evidence predates the Claimant's stroke in May 2014,

During this examination the Claimant was assessed as having unspecified essential hypertension, old myocardial infarction, and non-dependent tobacco use disorder. The EKG testing showed marked intraventricular conduction delay. A cardiology consult was to be set up. The Claimant was encouraged to quit smoking.

The Claimant reported that he had a stroke in May of 2014; no hospitalization records for this stroke were provided or obtained by the Department as ordered.

The Medical Examination Report and the Consultative Medical Examination referenced above were the only evidence available to be examined. Due to the failure of the Department to obtain Oakwood Hospital records, no medical documentation of the Claimant's stroke was available.

In addition, the Claimant has a number of conditions which he credibly testified to that affect his physical abilities. At the time of the hearing, the Claimant was 5'10" and weighed 222 pounds. He had recently lost 10 pounds. The Claimant credibly testified that he could stand for 10 minutes, and then became fatigued and his legs became weak and gave out. The Claimant could sit for 20 to 30 minutes, and then required rising and stretching. Claimant walked one hundred feet to get to the hearing and indicated that he was tired by the exertion. The Claimant testified that he had difficulty squatting and could bend down a little at the waist. The Claimant needed help with dressing and uses a shower chair. The Claimant has decreased lifting, carrying capacity of 2 pounds with the right hand/arm. Claimant could carry a gallon of milk his left hand, approximately 8 pounds. The Claimant further credibly testified that he could not do laundry because of both the requirements of bending and going up and down steps, as well as carrying the laundry due to continuing weakness on his right side. The Claimant also testified to decreased mental acuity when cooking, as he loses track and often burns his food. The Claimant could grocery shop, but only with use of a scooter. At the time of the hearing the Claimant indicated that he was no longer smoking. The Claimant has difficulty sleeping and takes at least two naps during the day, which is also due to the medications that he is currently prescribed and fatigue. The Claimant's spouse testified that after a blood clot to Claimant's brain, he demonstrated decreased cognitive abilities, and is now easily distracted and forgetful. In her opinion, the Claimant needs assistance and people around him to take care of himself.

Here, Claimant has satisfied requirements as set forth in steps one and two, as Claimant is not employed and has not worked since October 2012, when he had his heart attack, and his impairments have met the Step 2 severity requirements.

In addition, the Claimant's impairments have been examined in light of the listings and after a review of the evidence the Claimant's impairments, do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Listing 4.02 Chronic Heart Failure was examined in light of the Claimant's CAD and congestive heart failure; however, it is determined that had the medical records been obtained, the Claimant's condition may have demonstrated that he met the requirements of the listing based on his ejection fraction of 30%. However, without the actual medical records available, it is determined that Claimant does not meet the requirements of the listing. Therefore, vocational factors will be considered to determine Claimant's residual functional capacity to do relevant work.

The fourth step of the analysis to be considered is whether the Claimant has the ability to perform work previously performed by the Claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the Claimant from doing past relevant work. In the present case, Claimant's prior work experience includes working as a customer services clerk and cashier, and working at a car wash for a car dealer. Both these positions required Claimant to stand 7 hours a day, and he also had to be able to drive a car to run errands. The Claimant's neurologist advised him that he could not drive due to the current medications which he is taking and his stroke.

At the hearing, the Claimant credibly testified that he could no longer perform these jobs due to the standing, lifting, stooping, and bending requirements of these jobs. The Claimant's work was unskilled and is determined to be non-transferable. This prior work requires abilities and capabilities that based on the limitations presented cannot be any longer achieved by the Claimant. Therefore, it is determined that the Claimant is no longer capable of past relevant work due to the standing requirements of his past work and his doctor's imposed lifting restrictions. Thus a Step 5 analysis is required 20 CFR 416.920(e).

In the final step of the analysis, the trier of fact must determine if the Claimant's impairment(s) prevent the Claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the Claimant's:

1. residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
2. age, education, and work experience, 20 CFR 416.963-965; and
3. the kinds of work which exist in significant numbers in the national economy which the Claimant could perform despite her limitations. 20 CFR 416.966.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little; a job is in this category when it requires a good deal of walking or standing, or when it involves sitting

most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). At the time of hearing, the Claimant was 33 years old, and thus is considered a younger individual for MA-P purposes. The Claimant has a high school education. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984).

While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

The evidence of record was deemed insufficient and, therefore, an Interim Order was issued for the Department to obtain treating doctors' medical treatment records, test records from Claimant's cardiologist and Claimant's neurologist. Hospital admission records were also requested from Oakwood Hospital for May 2014. In addition, the Department was requested to attempt to obtain completed DHS 49's from four of the Claimant's treating doctors. The Department was to provide the DHS 49's to the Claimant for those doctors he was scheduled to see within 60 days. After follow up emails to the Department, no documents or medical records or testing have been provided. Therefore, any ambiguity found in the record shall be considered in a manner that benefits rather than harms the Claimant's case.

After a review of the entire record, including the Claimant's credible testimony, the credible testimony of Claimant's witness and spouse, the medical evidence presented, and looking at the evidence in the light most favorable to the Claimant, it is determined that the Claimant be determined to be less than sedentary , as it is determined that the total impact caused by the physical impairments suffered by the Claimant must be considered.

Deference was given by the undersigned to the Claimant's credible testimony and his current physical limitations, as well as the credible testimony of the Claimant's spouse. Therefore, after a review of the entire record, including the Claimant's testimony and the total impact caused by the physical impairment suffered by the Claimant must be considered. In doing so, it is found that the Claimant's physical impairment have a major impact on his ability to perform even basic work activities. Accordingly, it is found that the Claimant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a). After review of the entire record, and in consideration of the Claimant's age, education, work experience and residual functional capacity, it is found that the Claimant is disabled for purposes of the MA-P and SDA program at Step 5.

DECISION AND ORDER

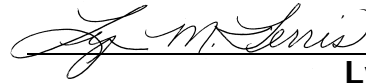
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled.

Accordingly, the Department's decision is hereby REVERSED

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The Department is ORDERED to initiate a review of the application for MA-P and SDA dated November 6, 2013 and retro-application, if not done previously, to determine Claimant's non-medical eligibility.

2. A review of this case shall be set for November 2015.



Lynn Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **11/25/2014**

Date Mailed: **11/25/2014**

LMF/tm

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

cc:

